

that the list covered the three years prior to the Court's order. On that call, Plaintiffs also asked if Defendants would agree to equitable tolling, and Defendants responded they would not. Plaintiffs did not ask for an expanded list—a fact they seem to admit when they acknowledge in their letter filing that “Mr. Cook may not have expressly asked Defense counsel to provide the full class list.” Dkt. 152 at 2. Contrary to the statements in Plaintiffs' letter to the Court, Defendants did *not* communicate in that April 2019 conversation that they “would not be producing such a list.” *See id.* at 2. Indeed, they did not know that Plaintiffs wanted one.

Plaintiffs first attempted to confer about expanding the class list by email the afternoon they filed their motion—*after* the opt-in period had ended. This email is the second “conference,” although as Defendants' counsel indicated in their response to that request, a phone conference is a preferable way of conferring on anything but the most routine issues. To be clear, Plaintiffs never raised the issue of a second notice or requested an expanded class list until after the notice to potential class members was sent out and the opt-in period closed.

In their letter to the Court, Plaintiffs selectively quote statements by defense counsel Matt Wood, omitting the portion of the hearing where Mr. Wood clarified that his statements about the expanded class list were directed at the April phone call between the attorneys and not the email attempt to confer after the opt-in period closed:

MR. LAWSON: . . . We met and conferred, Judge.

THE COURT: Okay. That's not what I understood Mr. Wood to say. So do have a disagreement with that?

MR. LAWSON: That's my recollection of it what Mr. Wood said.

MR. WOOD: Your Honor, what I was speaking to was before the notice went out we had a conversation. They asked what period it covered. They did not ask us to give the other names.

THE COURT: I get that. What I'm saying is prior to when they filed the motion, did they come to you and say we'd like these other names going back three years

from the complaint, you guys said no, and is that what triggered their filing the motion?

MR. WOOD: I don't recall that conversation, Your Honor.

THE COURT: Do you know who -- do you have that -- who did the plaintiff have the conversation with where you requested that quantum of names going back that sub period? Who said no?

MR. LAWSON: Yeah. My recollection it was Kelly Cook had the conversation with Julie Springer. That's my recollection.

THE COURT: And unfortunately neither of the generals are here today and which is fine. I don't know that it makes all that much difference.

Dkt. 150 at 52-53.

If Plaintiffs really thought Defendants were required to provide a class list going back three years from the Complaint, then they should have raised the issue *before* the class list went out. Instead, Plaintiffs' counsel waited more than two months, until after the class notification and opt-in period was complete, to request an expanded list and second notice period.

Defendants appreciate the opportunity to submit these final thoughts on issues raised by the Court at the hearing.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by way of:

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